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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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|-----------------|-------------|----------------------|---------------------|

09/361,612 07/27/99 MCEWAN

J 8-02-6004

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| EXAMINER |
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QM02/0521

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| TRIEU, T |              |
| ART UNIT | PAPER NUMBER |

3748  
DATE MAILED:

05/21/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/361,612

Applicant  
James A. McEwan

Examiner  
Thai-Ba Trleu

Art Unit  
3748



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Apr 27, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 9-12 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on Apr 27, 2001 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some\* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

The receipt and entry of the Applicant's Amendment filed April 27, 2001, is acknowledged.

The arguments presented therein with respect to the applied references was deemed persuasive; however, a new non-final office action is set forth below.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claims 1-2, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Metzfeld (Patent Number 5,033,592).***

**Regarding claims 1-2,** Metzfeld discloses an actuator rod for a turbocharger pressure control assembly, the actuator rod comprising a first elongate portion defining a first rod end (30), and a second portion defining a second rod end (12), the first and second portions being pivotally joined to one another to allow a degree of relative pivotal motion between the two portions in at least

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one plane perpendicular; and in at least two orthogonal planes perpendicular to the axis of the elongate first portion (26) (See Figure 1, Column 4, lines 65-68).

***Claims 1-2, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Gautier (Patent Number 5,186,004).***

(See the entire document).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metzfeld (Patent number 5,033,592), in view of Hauer (Patent number 4,994,660).***

Metzfeld discloses the invention as recited in the rejection of claims 1-2; however, Metzfeld fails to disclose the pivot joint being a spherical joint; a socket defined by other of the first and second portions to receive the spherical formation; and a pneumatic actuator connected to the first rod.

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Hauer teaches that it is conventional in the linkage mechanism art, to utilize the pivot joint being a spherical joint (68); a socket defined by other of the first and second portions to receive the spherical formation; and a pneumatic actuator (70) connected to the first rod (73) (See Figures 2 and 6, and Column 4, lines 36-40).

It would have been obvious to one having ordinary skill in the art at that time the invention was made, to have utilized pivot joint being a spherical joint; a socket defined by other of the first and second portions to receive the spherical formation; and a pneumatic actuator connected to the first rod, as taught by Hauer, in the Metzfeld device to improve the performance of the joint.

***Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metzfeld (Patent number 5,033,592), in view of Hauer (Patent number 4,994,660), and further in view of Braddick.***

The modified Metzfeld device discloses the invention as recited above; however, fails to disclose the pneumatic actuator comprising a spring loaded diaphragm housed within a pressure chamber, the diaphragm being attached to the first rod end; and a valve assembly, end of the actuating rod being connected to the actuator and the other being connected to the valve assembly, whereby the pneumatic actuator controls operation of the valve assembly via actuator rod; the valve assembly comprising a lever arm extending from and connected to a valve, the second portion of the

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actuator rod being secured to the lever arm extending from the valve assembly by way of which the valve is operated.

Braddick teaches that it is conventional in the turbocharger control actuator art, to utilize the pneumatic actuator (10) comprising a spring (48) loaded diaphragm housed within a pressure chamber (50), the diaphragm being attached to the first rod end (58); and a valve assembly (32), end of the actuating rod being connected to the actuator and the other being connected to the valve assembly, whereby the pneumatic actuator controls operation of the valve assembly via actuator rod (See Abstract, Figure 1, Columns 1-2, lines 1-67, and Column 3, lines 1-20); the valve assembly comprising a lever arm (36) extending from and connected to a valve (32), the second portion of the actuator rod being secured to the lever arm extending from the valve assembly by way of which the valve is operated (See Column 4, lines 1-24).

It would has been obvious to one having ordinary skill in the art at that time the invention was made, to have utilized the pneumatic actuator, as taught by Braddick, in the Metzfeld device to improve the control of the turbocharger.

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*Allowable Subject Matter*

Claims **10-12** are allowed.

Claim **9** is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Prior Art*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consist of the following patents:

- Engle (US Patent Number 4,766,980) discloses a rail car brake apparatus having a spherical joint.
- Bogenschutz et al. (US Patent Number 4,060,152) disclose a rail car brake apparatus having a spherical joint.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai-Ba Trieu whose telephone number is (703)-308-6450 . The examiner can normally be reached on Monday-Friday from 8:30 a.m. to 5:00 p.m, first Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion, can be reach on (703)308-2623. The fax phone number for this group is (703) 308-7763.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.


TTB

Thai-Ba Trieu

May 9, 2001

Patent Examiner

Unit art 3748

  
THOMAS DENION  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700